

Remarks:

Requirements for restriction and election of species under 35 U.S.C. §121 were set forth in the Official Action dated October 19, 2004 in the above-identified patent application. It is the Examiner's position that claims 1-16 in the present application are drawn to six (6) patentably distinct inventions which are as follows:

Group I - Claim 1 drawn to a compound classified in class 546, and several subclasses.

Group II - Claims 2-4 drawn to a process for preparing a compound classified in classes 546, and several subclasses.

Group III - Claim 5 drawn to a compound classified in class 546, and several subclasses.

Group IV - Claims 6-8 drawn to a process for preparing a compound classified in classes 546, and several subclasses.

Group V - Claims 9-10 and 14-16 drawn to a complex of a compound classified in class 546, and several subclasses

Group VI - Claims 11-13 drawn to a process for preparing a polyolefin classified in classes 546, and several subclasses.

Furthermore, at pages 4-6 of the October 19, 2004 Official Action, the Examiner indicates that an election of species is required, including an exact definition of each substitution on the base molecule, wherein a single member at each substituent group or moiety is selected.

The October 19, 2004 Official Action also includes a section headed Advisory of Rejoinder, in which it is pointed out that if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims, which depend from or otherwise include all the limitations of the allowable product claim, will be rejoined.

Applicant, through his undersigned attorneys, hereby requests reconsideration, at least in part, of the requirement for restriction set forth in the October 19, 2004 Official Action. It is noted that an initial, shortened statutory

response period of one (1) month was set in the October 19, 2004 Official Action, A petition for a three (3) month extension of the initial response period is presented with this Amendment and Request for Reconsideration of Requirement for Restriction, which is being filed before the expiration of the three (3) month extension period, as February 19, 2005 fell on a Saturday and February 21, 2005 was a federal holiday.

Restriction under 35 U.S.C. §121 may be required only when “...two or more independent and distinct inventions are claimed in one application...”.

According to MPEP §802.01, “independent” means that “there is no disclosed relationship between the two or more subjects disclosed”, that “... they are unconnected in design, operation, or effect”.

Clearly, claim Groups III and IV, at least insofar as claim 9, 10 and 14 are concerned, are not independent within this meaning. There is a clear relationship between the compounds of claim 5 and the corresponding complexes of claims 9, 10 and 14. The compounds of claim 5 constitute an essential element of the complexes of claims 9, 10 and 14.

MPEP §802.01, further require that claims considered as ‘distinct’ must be patentable over each other. Furthermore, according to MPEP §802.02, in order to insist upon restriction, an Examiner must show by appropriate explanation one of:

- a) Separate classifications - the October 19, 2004 Official Action fails to demonstrate that this is the case. Indeed, for all that appears in the Official Action, the PTO classification is the same;
- b) Separate status in the art - no separate status for inventive effort is evident with respect to the subject matter of claim 5, on the one hand, and claims 9, 10 and 14, on the other hand;
- c) Different field of search - again, the October 19, 2004 Official Action is silent in this regard.

In this case, restriction of the subject matter claimed in Groups III and V under 35 U.S.C. §121 is not proper, as the requirement for “independent and distinct” is clearly not met. Inasmuch as search and examination of claims 5, 9, 10

and 14 of this application can be made without serious burden (MPEP 803), examination of such claims is requested.

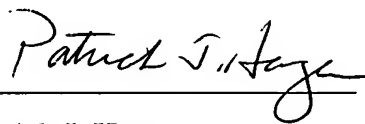
In order to be fully responsive to the above-mentioned requirements, Applicant hereby elects the subject matter of Group III i.e. the compound of claim 5 for examination. In response to the requirement for election of species, Applicant further elects the species of example 4, i.e. 1-Isoquinolin-1-yl-naphthalen-2-yl-methyl amine. Claims 5 is readable on the elected species.

Applicant's elections in response to the present restriction and election of species requirements are without prejudice to his right to file one ore more continuing application, as provided in 35 U.S.C. §121, on the subject matter of any claims finally held withdrawn from consideration in this application. These elections are also made subject to the conditions for possible rejoinder set forth in the Advisory of Rejoinder section of the October 19, 2004 Official Action.

Early and favorable action on the merits of this application is respectfully solicited.

Respectfully submitted,

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A handwritten signature in black ink, reading "Patrick J. Hagan", is written over a horizontal line.

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